The Orissa Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

No. 876 CUTTACK, THURSDAY, JUNE 22, 2006 / ASADHA 1, 1928

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 18th June 2006

No. 4337—Ii/1(B)-77/1996 (Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th April 2006 in Industrial Disputes Case No. 24 of 1997 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of the Vice-Chairman, Bhubaneswar Development Authority, Bhubaneswar and its Workman Shri Ajaya Kumar Parida, Qr. No. IV, B-186, Unit-6, Bhubaneswar was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 24 OF 1997

Dated the 29th April 2006

Present :

Shri P. K. Sahoo, O.S.J.S. (Jr. Branch)
Presiding Officer, Labour Court
Bhubaneswar.

Between :

The Vice-Chairman . . First Party—Management
Bhubaneswar Development Authority
Bhubaneswar.

And

Shri Ajaya Ku. Parida . . Second Party—Workman
Qr. No. IV-B/186, Unit-6, Bhubaneswar.

Appearances :

For the First Party–Management . . Shri L. K. Mohapatra

For the Second Party–Workman . . Shri N. K. Mohanty

AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12 read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court in the Labour & Employment Department memo No. 6265(5)-L. E., dated the 27th May 1997 for adjudication and Award.

2. The terms of reference may briefly be stated as follows :–

> "Whether the action of the management of Bhubaneswar Development Authority, Bhubaneswar in terminating the services of Shri Ajaya Kumar Parida, Mali with effect from the 12th February 1993 is legal and/or justified ? If not, what relief the workman is entitled to ?"

3. By way of this reference workman Shri Ajaya Kumar Parida has challenged the legality and justifiability of the action of the management of Bhubaneswar Development Authority, Bhubaneswar (in short the management) in terminating his services with effect from the 12th February 1993.

The facts of the case in breif as narrated in the statement of claim tend to reveal that the workman joined in the establishment of the management as Mali with effect from the 16th September 1989 and continued to work as such till the date of his termination on the 12th February 1993. It is categorically averred in his statement of claim that although he had rendered continuous service for years together with much sincerity, devotion and to the utmost satisfaction of the management but without any rhyme or reason, the management illegally terminated his services with effect from the 12th February 1993 without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). All his efforts for his reinstatement when bore no fruit he approached the labour machinery but the conciliation proceeding initiated by the District Labour Officer, Bhubaneswar also ended in failure and the matter was ultimately referred to this Court by the Government in the Labour & Employment Department for adjudication. While seeking industrial adjudication, the workman has claimed for his reinstatement in service with back wages along with other service benefits. Hence the reference.

4. The management, on the other hand, entered its appearance and filed written statement opposing the claim of the workman *inter alia* contended that it has never terminated the services of the workman with effect from the 12th February 1993 rather the workman voluntarily abandoned the job with effect from the said date and did not turn up for joining his duty. According to the management, the workman was a casual worker and he was engaged as and when the work was available for him. It is categorically averred in its written statement that the workman had never worked for more than 240 days as regular employee. Therefore, with regard to the termination of the workman, the provisions of retrenchement are not attracted and the management was not under obligation to comply with the provisions of Section 25-F of the Act. It is further averred that since the management has never terminated

the services of the workamn, he is , therefore, not entitled for any relief. On the above backgrounds, the rejection of the claim of the workman has been prayed for by the management under the present reference.

5. On the above pleadings of the parties, the following issues have been framed :–

ISSUES

(i) Whether the action of the management of Bhubaneswar Development Authority, Bhubaneswar in terminating the services of Shri Ajaya Kumar Parida, Mali with effect from the 12th February 1993 is legal and/or justified ?

(ii) If not, what relief the workman is entitled to ?

6. The workman in support of his case has examined himself as W. W. 1 and has relied upon a certificate marked as Ext. 1. On the other hand, the management has examined one Sankar Sahoo as M. W. 1 and has relied upon the documents such as, authorisation letter, xerox copy of the extract of the field diary and bank challan marked as Exts. A to C respectively in support of its case.

FINDINGS

7. *Issue Nos. (i) and (ii)*—For better appreciation and adjudication of the dispute under reference, both the above issues are taken up together.

It appears from the evidence of the workman that he joined in the establishment of the management with effect from the 16th September 1989 as Mali. He was engaged as such for beautification of Park and Nursery. While working as such, he had applied leave on the 12th February 1993 for 15 days on medical ground for the period from the 12th February 1993 to the 27th February 1993. When he reported for duty on the 28th February 1993, he was not allowed to work. Subsequently, he came to know that he was terminated from service with effect from the 12th February 1993. In his evidence, he has categorically stated that the management while terminating his services had not given any notice or notice pay and retrenchment compensation to him. Even he was also not paid his wages for the period from the 1st February 1993 to 12th February 1993. He has categorically stated that he had worked continuously since the date of his joining till the 12th February 1993 without any break. During evidence, he has duly proved the certificate issued by the Chief Horticulurist, Bhubaneswar in his favour indicating his engagement under the management with effect from the 18th September 1989 marked as Ext. 1. During cross-examination, he clearly admits that he has not filed any document with regard to his appointment order as Mali and the receipt of wages from the management for the above period. It has been suggested to him that he had voluntarily abandoned the service and that he had not completed 240 days of continuous service in each calendar year and had not completed 240 days preceding the date of termination in terms of the statutory provisions of the Act to which he has replied in the negative. The

management on the other hand through M. W. 1, Sankar Sahoo has led evidence to the effect that the workman was working under the management since 1989 till the 11th February 1993. He did not turn up for joining his duty with effect from the 12th February 1993 onwards, M. W. 1 admits in his evidence that the management used to pay the wages to the casual workers once in a month but on daily rated basis. The workman had worked till the 11th February 1993 and as he did not turn up for joining his duty with effect from the 12th February 1993, his wages for the period from the 1st February 1993 to the 11th February 1993 was deposited in the Bank vide Bank Challan Ext. C. During evidence he has proved the field diary marked as Ext. B showing deposit of unpaid wages of Rs. 250 of the workman. During cross-examination he clearly admits that no notice or notice pay and retrenchment compensation was given to the workman. He has also denied his knowledge if the retrenchment benefits were offered to the workman. He has categorically stated that there was no allegation against the workman during the tenure of his engagement rather he had discharged his duties sincerely and satisfactorily. He admits that the junior employees to the workman are still working under the management. The further admitted evidence is that the services of some casual labourers working under the management have been regularised. Even the casual labourers who have no appointment order at initial stage of engagement have also been regularised in their services under the management. He has further stated that it was a prevailing system that one casual labourer can go on leave without giving any leave application. There was also no system to sanction the leave even if the leave application was received from the casual worker.

8. Both the parties have adduced evidence in support of their respective cases. From the above discussion the principal issue thus appears to be as to whether the workman has completed 240 days of service in terms of the statutory provisions of the Act.

The Hon'ble Apex Court in the matter between R. M. Yellatti and Assistant Executive Engineer reported in 2006 (108) FLR 213 (Supreme Court) has taken a view that :

"The burden of proof as to the completion of 240 days of continuous work in a year is on the claimant to show that he had worked for 240 days in a given year."

The requirement of the statute of 240 days cannot be disputed and it is for the employee concerned to prove that he has in fact completed 240 days in the last preceding 12 months period. Therefore the proof of working for 240 days is stated to be on the employee in the event of any denial of such a factum. In the case at hand the workman has led evidence to the effect that he had worked continuously under the management since the date of joining on the 16th September 1989 till the date of his termination on the 12th February 1993. The above evidence given by the workman clearly shows that he had rendered continuous service with effect from the 16th September 1989 till the 12th February 1993 and had completed 240 days of service in terms of the statutory provisions of the Act. Above all, the fact with regard to the continuous service having been rendered by the workman in the establishment of the

management has not been disputed by the management. Rather the evidence led by the management clearly goes to show that the workman concerned had rendered continuous service since 1989 till the 11th February 1993 and had not turned up for joining his duties with effect from the 12th February 1993. It is therefore clearly evident that the fact of continuous service having been rendered by the workman in the establishment of the management has been well proved and the workman concerned has successfully established and discharged the burden in proving the above fact.

The claim of the workman before this Court is that he had rendered continuous service and had completed 240 days of service in terms of the statutory provisions of the Act, but the management without any rhyme or reason illegally terminated him from service without complying with mandatory provisions of Section 25-F of the Act. According to the workman as he has completed 240 days of service in terms of the statutory provisions he is entitled for reinstatement in service, since the provisions of Section 25-F of the Act have not been complied with in the case of his termination. On the other hand the stand taken by the management before this Court is that the workman concerned was casual worker and he was engaged as and when the work was available for him. The management had neither appointed him nor terminated his services, with effect from the 12th February 1993 rather the workman concerned voluntarily abandoned the service with effect from the said date and did not turn up for joining his duties. Therefore the workman is not entitled for any relief.

The settled position of law is that the non-compliance of the provisions of Section 25-F of the Act render the termination of service of a workman in effective. The Hon'ble Apex Court in catena of decisions has consistently taken the view that :

> "The provisions of Section 25-F of the Act is mandatory and any violation thereof will render the retrenchment void *ab initio*."

In the case of the Executive Engineer, Bhubaneswar Electrical Division, GRIDCO *Vrs.* Presiding Officer, Labour Court, Bhubaneswar and others reported in 2004 (103) FLR 560 of our own Hon'ble High Court , His Lordship has held that :

> "The retrenchment of the workman was without following the mandatory provisions of Section 25-F of the Act. Once the retrenchment was held to be illegal and unsustainable the only order that could be passed was to set aside the order of retrenchment and direct that the workman should be reinstated in service."

While considering a similar question regarding non-compliance of Section 25-F of the Act the Hon'ble Apex Court in the case of Deep Chandra *Vrs.* State of Uttar Pradesh and another reported in 2001 (88) FLR 508 (Supreme Court) has held that :

> "The service of an employee who had put in more that 240 days in a year cannot be put to an end without following the procedure prescribed under Section 25-F of the Industrial Disputes Act."

In the matter between Sonepat Co-operative Sugar Mills Ltd. and Rakesh Kumar reported in 2006 (108) FLR 592 (Supreme Court) it has been clearly observed by the Hon'ble Apex Court that :

> "Respondent was employed on daily wage basis and worked for more than 240 days in a period of one year prior to termination without notice or notice pay and retrenchment compensation. As such there was a clear violation of Section 25-F of the Act and therefore, no error found in direction for reinstatement."

In the case of Divisional Manager, O.F.D.C. Ltd., Boudh Commercial Division *Vrs.* Kanista Bisoi and another reported in 2004 (Supp.) OLR 694 of our own Hon'ble High Court, His Lordship has clearly observed that :

> "To constitute 'abandonment of service' there must be total or complete giving up duties and/or expression of the intention not to serve any further. This being a question of fact, onus lay on the management which took such a plea to prove with cogent evidence that in fact the workman had abandoned his service. Retrenchment of an employee without following the mandatory pre-conditions of Section 25-F of the Act is not only unsustainable but also illegal."

In the case at hand, the management has totally failed to adduce any evidence to the effect that the workman had abandoned the service with effect from the 12th February 1993. The management has also failed to establish that the mandatory provisions of Section 25-F of the Act had been complied with in the present case. Rather the admitted evidence led by the management is that no notice or notice pay and retrenchment compensation had been given to the workman. From the above evidence it can safely be concluded that the management had not followed the mandate of Section 25-F of the Act while terminating the services of the concerned workman. Admittedly the management has taken a stand before this Court that the workman had voluntarily abandoned the job, but in my considered view, even if the case set up by the management is taken to be correct that the workman has abandoned, then also his services cannot be terminated in the manner as it has been done without complying with the provisions of Section 25-F of the Act.

In the instant case the termination having been made in violation of the mandatory provisions of Section 25-F of the Act is therefore, void *ab initio*. On the whole, after carefully examining the evidence tendered by the parties, the documents relied upon by them and keeping in view the settled position of law, I am of the considered opinion that the termination of services of the workman with effect from the 12th February 1993 by the management was illegal, unjustified and against the mandate of Section 25-F of the Act. In that view of the matter, the workman is entitled to the relief of reinstatement.

The perusal of the schedule of reference clearly emerges that the termination of services of the workman has been effected from the 12th February 1993. In the meanwhile more than

13 years have been elapsed. Admittedly the management has not availed the services of the workman with effect from the date of his termination. The workman has also nowhere asserted that he has not been gainfully employed elsewhere with effect from the date of his termination. In that view of the matter, the workman is entitled for reinstatement, but on the fact and circumstances of this case as the workman had not worked with effect from the date of his termination, he is not entitled to any back wages. Both the above issues are answered accordingly.

Hence it is ordered :

ORDER

That the action of the management, Bhubaneswar Development Authority, Bhubaneswar in terminating the services of Shri Ajay Ku. Parida, Mali with effect from the 12th February 1993 is neither legal nor justified. The workman Shri Parida is entitled to be reinstated in service but without any back wages.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO
29-4-2006
Presiding Officer
Labour Court, Bhubaneswar

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29-4-2006
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
N. C. RAY
Under-Secretary to Government

Printed and published by the Director, Printing, Stationery and Publication, Orissa, Cuttack-10
Ex. Gaz. 391–193+11